IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 949 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BOTAD NAGARPALIKA - Petitioner(s)

Versus

SOMABHAI BANABHAI WAGHELA - Respondent(s)

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Appearance :

M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/09/2005

ORAL JUDGMENT

1. In the present petition, the petitioner Nagarpalika has challenged the legality of the award dated 30th March, 2001 passed by Industrial Tribunal, Bhavnagar. By the

impugned award the workman concerned i.e. respondent herein was directed to be made permanent Mazdoor w.e.f 1/8/94 and be paid salary and other benefits payable to regular Mazdoors. It is the case of the petitioner that there is no such post sanctioned as regular Mazdoor and in any case the respondent was never regularly selected through regular selection process in any post. It is, therefore, contended that there cannot be any direction or regularisation or being made permanent as given by the Labour Court.

1.1 In a Full Bench decision of **Amreli Municipality vs. Gujarat Pradesh Municipal Employees Union reported in 2004 (3) GLR page 1841** Full Bench of this High Court held that the fact of engagement of a casual or daily rated employee for long duration itself will not make him permanent or be entitled to be regularised in service. It was further observed that the Labour Court or Industrial Tribunal has no jurisdiction to issue direction or pass an award regularising service of the employees of a Municipality or a local authority without there being a sanctioned set up and no persons can be regularised if he had entered service without following selection process under the title of daily rated

employee. In that view of the matter, the direction of the Industrial Tribunal cannot be sustained. It is not in dispute that the workman was never selected through regular selection process for a sanctioned post.

2. In the said decision of Amreli Municipality (supra) the Full Bench made following observations:

> 12.1.16. “Before parting, we may like to observe that the unfortunate workmen who have continued for years as temporary employees and have succeeded before the Labour Court/Industrial Court, in view of our decision, in the event of their termination, the authorities may see to it that no unqualified person is appointed in their place and their claim for regularisation be considered provided they are eligible on the sanctioned posts. If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of law/rules/circulars within the budgetary provisions. So as to see that no irregularities are committed in the matter of appointment by Panchayats, Municipalities and Corporations, in our opinion, it would be advisable if the State Government issues an appropriate circular giving details with regard to the aforesaid guidelines to all the local authorities. Order accordingly.”

3. In view of the above discussions, while allowing the petition and setting aside the impugned award the petitioner is directed to bare in mind the observations of the Full Bench reproduced herein above and act

accordingly. With these observations and directions, the petition is allowed. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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